



# Initial Response to Proposed Dairy General WDRs

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# CARES Membership

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California Dairies, Inc.

Dairy Farmers of America, California

Land O' Lakes

Western United Dairymen

Milk Producers Council

California Dairy Campaign

Alliance of Western Milk Producers

Hilmar Cheese Company

Dairy Institute of California

Joseph Gallo Farms

Crystal Cream & Butter

Turlock Dairy & Refrigeration

Kraft Foods

Bank of the West

Saputo Cheese

# Three Underlying Principles As We Move Forward

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- More **PRACTICAL**
- More **EFFICIENT**
- More **COST-EFFECTIVE**

# General Legal Principles

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- Regulate to attain the highest water quality which is reasonable, considering all demands being made and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. (Water Code Sections 13000.)
- Must balance ideal of clean water with economic progress and development. Must balance environmental characteristics and economic considerations. (Legislative History, 1969 Study Panel Report, pages 7 and 13.)
- Prior to implementation of any agricultural water quality control program, estimates of the program costs and identification of funding sources shall be indicated. (Water Code Sections 13141.)

# Specific Legal Issues

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Draft WDR Language: Strict and Immediate Compliance

- (a) The discharge of waste which causes or contributes to an exceedence of any applicable water quality objectives is prohibited. (Provision A.3.)
- (b) The disposal of waste shall not cause degradation of surface or groundwater. (Provision B.1.)
- (c) The discharge of waste shall not cause underlying groundwater to be degraded or to exceed waster quality objectives. (Provision D.1.)
- (d) Any instance of noncompliance with this Order constitutes a violation and is grounds for enforcement action. (Provision E.1.)

# **A Reasonable Alternative To Strict And Immediate Compliance: The Iterative Approach**

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- Establish water quality standards
- Achieve standards through implementation of Best Management Practices (BMPs)
- If existing BMPs are not adequate to prevent exceedence of standards, develop additional BMPs

# **The Iterative Approach Has Been Upheld By The State Water Board And The Courts**

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- State Water Board Orders: 91-03, 96-13, 98-01, 99-05, 2001-15
- Iterative process is appropriate for compliance with water quality standards (2000-15)
- Board endorsed an iterative, BMP-based approach toward compliance with water quality standards (99-05)

# Court Cases

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- Compliance with water quality standards by employing an iterative approach of improved BMPs over time is appropriate. (*Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159)
- The iterative process is the centerpiece of achieving water quality standards. (*Building Industry Assn. of San Diego County v. SWRCB* (2004), 124 Cal.App.4th 866)
- BMP-driven approach appropriate for industrial as well as municipal discharges. (*Diver's Environmental Conservation Organization v. SWRCB* (11/29/06), Court of Appeal, Fourth Appellate District)

# Reporting and Monitoring Requirements

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- Twenty-one pages
- The burden, including costs, of reports must bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. (Water Code Section 13267)
- The Regional Board must provide a written explanation as to the need and identify the evidence which supports requiring the person to provide the reports. (Water Code Section 13267)
- State Board has reduced extent of monitoring programs it concluded were not justified under Water Code Section 13267. (Order No. 2003-0006)

# Prescriptive Standards

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## Draft WDRs

- Discharge of waste and/or stormwater from the production area is prohibited (Provision A.1 goes beyond federal requirement that such discharges are allowed if they occur during 25-year, 24-hour storm event).
- New or reconstructed retention ponds must have seepage rates of no greater than  $1 \times 10^{-6}$  cm/sec. (Provision B.7.)
- Specific buffer and setback requirements for land application of manure and wastewater. (Provision C.10.)

# Adoption Of General Permits Are Rule-making Actions

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- State Administrative Procedure Act (APA):
- No agency shall issue a standard of general application unless the standard is adopted as a regulation. (Government Code Section 11340.5.)
- The APA process requires a detailed examination of economic impacts.
- Is a partial exception for water quality control plans and State policy for water quality control. (Government Code Section 11353.)
- Use of Performance Standards Rather than Prescriptive Standards: Consistent with BMP-driven approach and avoids underground regulation issue.

# We Were Asked By CARES To:

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- Analyze the proposed requirements from an engineering and management feasibility standpoint.
- Assess the costs of the proposed regulations.
- Identify whether there are potential obstacles to implementation.
- Assist in identifying practical, cost-effective and efficient recommendations.

# Our Initial Findings:

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- Tentative order is far more extensive than anything that dairies have been asked to implement before;
- The requirements are more stringent than what we've seen in other areas;
- Costs will likely exceed \$89,000 initially and \$58,000 annually per dairy.
- *This does not include infrastructure costs that will be triggered by the regulations; these could be substantially higher*

# What Are The Requirements?

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- Manure and process wastewater monitoring and testing
- Irrigation water and water use monitoring (including production wells)
- Soil monitoring
- Plant tissue monitoring
- Discharge and surface water monitoring
- Tailwater monitoring
- Storm water monitoring
- Groundwater monitoring

# Requirements, continued

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- Detailed, stringent sampling requirements
- Detailed, stringent analytical requirements
- Analysis of numerous constituents – not just monitoring for one or two
- Extensive record-keeping and reporting requirements
- Annual reporting
- Groundwater reporting
- Storm water reporting

These are ongoing requirements

# What Are The Costs?

Existing conditions report	\$5,000
Waste Management plan	\$16,000
Nutrient Management plan	\$12,000
Proposed interim facility mods.	\$10,000
Salinity report	\$4,000
Monitoring and reporting program	<u>\$42,000</u>
<b>Total initial costs</b>	<b>\$89,000</b>

Ongoing costs estimated at **\$58,000** annually

**NOT INCLUDING INFRASTRUCTURE COSTS**

# What Are The Technical Obstacles?

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- Nutrient management approach provides an academic level of detail. It needs to take a more practical, real-world tested approach.
- Record-keeping requirements are probably far more detailed than they need to be.
- Performance standards remain unclear for pond construction and other important aspects.
- The monitoring data will be costly to collect, and it is unclear whether the data will actually be useful to regulators.

# Can Practical, Cost-effective And Efficient Alternatives Be Identified?

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- We believe there is significant opportunity to improve the General Order while addressing the Board's goals.
- We are prepared to work with CARES and our colleagues in the engineering community and other qualified experts to prepare specific, technically supportable written recommendations in a short time frame.

# Industry Recommendations

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- This will be a **major** transition for California dairy farmers. How can we work together to smooth this transition? We have four specific recommendations.

# Recommendation #1

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- Direct staff to work with dairy industry, technical consultants and engineers to develop more practical, efficient and cost-effective plans for monitoring, nutrient management and waste management:
  - ➔ Thorough cost analysis of each program component
  - ➔ Full cost of compliance for Board consideration
  - ➔ Identify practical, efficient and cost-effective alternatives where needed

## Recommendation #2

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- Direct staff to work with dairy industry organizations and other technically knowledgeable experts to address, and where appropriate, correct, the dozens of technical concerns being identified in the current draft

# Recommendation #3

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- Direct staff to analyze the consistency of the proposed requirements with those of other farming activities
  - ➔ Unintended consequences?
  - ➔ Discouraging use of organic fertilizer?
  - ➔ Increasing difficulty to comply?

# Recommendation #4

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- Provide a brief extension for written comments until January 15

# Thank You

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